

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STEPHON VERGES,)	
)	
Movant,)	
)	
v.)	No. 4:18-CV-1448-CDP
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This closed case is before the Court on movant's (1) pro se motion to reinstate his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, and (2) pro se motion for reconsideration of the order of dismissal dated October 15, 2018. For the following reasons, the Court will grant both motions, and order movant to show cause within twenty-one days of this Order why this action should not be dismissed as time barred.

Background

On August 23, 2018, movant filed his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On August 30, 2018, the Court reviewed the motion and found it was time barred. The Court ordered movant to show cause within twenty-one days why the motion should not be summarily dismissed. *See* ECF No. 2.

Nineteen days after the Court issued its show cause order, movant filed an amended motion to vacate, set aside, or correct his sentence on a court-ordered form. In paragraph 18 of the motion, which requires movant to state why the one-year statute of limitations in 28 U.S.C. § 2255 does not bar his motion, movant states:

My 2255 motion to set aside vacate or correct is timely because in my plea agreement I did not waive the right to appeal based on ineffective assistance of counsel or prosecutorial misconduct.

On October 15, 2018, the Court construed movant's amended § 2255 motion as movant's response to the show cause order dated August 30, 2018. The Court concluded that movant's arguments were without merit, and dismissed movant's § 2255 motion as time barred.

Shortly after this dismissal, movant filed his motion to reinstate his § 2255 motion and his motion to reconsider the order of dismissal. In both motions, movant states he never received the Court's show cause order dated August 30, 2018. He states that he received only the order of dismissal dated October 15, 2018. He asks the Court to allow him to respond to the show cause order that he never received.

After reviewing the grounds raised by movant in his motion to reinstate and his motion for reconsideration, the Court will grant movant's motions, and vacate the order of dismissal dated October 15, 2018. The Court will order the Clerk of Court to resend to movant the show cause order dated August 30, 2018. Movant shall have twenty-one days to respond to the show cause order. Failure to respond to the show cause order within twenty-one days of the date of this Order will result in dismissal of this action.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to reinstate his § 2255 motion is **GRANTED**. [ECF No. 5]

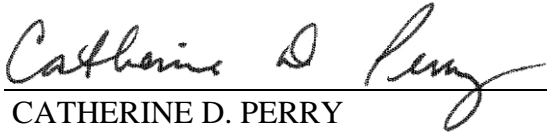
IT IS FURTHER ORDERED that movant's motion to reconsider the order of dismissal is **GRANTED**. [ECF No. 6]

IT IS FURTHER ORDERED that the order of dismissal dated October 15, 2018 is **vacated**. [ECF No. 4]

IT IS FURTHER ORDERED that the Clerk of Court shall resend to movant the show cause order dated August 30, 2018. [ECF No. 2]

IT IS FURTHER ORDERED that movant shall respond to the show cause order dated August 30, 2018 within twenty-one (21) days of the date of this Order. Failure to respond within twenty-one (21) days will result in the dismissal of this action.

Dated this 20th day of May, 2019.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE